

Introduced by Senator Migden

February 23, 2007

An act to amend Sections 132a, 3201.81, 4658.5, and 4658.6 of the Labor Code, relating to workers' compensation.

LEGISLATIVE COUNSEL'S DIGEST

SB 942, as amended, Migden. Workers' compensation.

(1) Existing Workers' Compensation Law requires employers to secure the payment of workers' compensation, including medical treatment, for injuries incurred by their employees that arise out of, or in the course of, employment. Existing law declares that it is the policy of this state that there should not be discrimination against workers who are injured in the course or scope of their employment.

This bill would provide that ~~there is a rebuttable presumption that an employer has discriminated against an employee~~ if, after the employee has been disabled from work as a result of injury or illness arising out of, or in the course of, employment pursuant to which the employee is eligible to receive workers' compensation benefits, *the employee is willing and available to return to work*, "*there is a rebuttable presumption that an employer has discriminated against an employee if*" ~~here the employer refuses to reinstate the employee to his or her regular position with full wages and benefits within one working day~~ *5 working days* after receipt of a written statement by the employee's treating physician that the employee is able to perform the full requirements of the employee's regular position, notwithstanding the inherent risks of the position, without risk of further injury to the employee or ~~other employees in the workplace. The bill would make~~

~~it a misdemeanor for an employer to refuse to reinstate an employee to his or her preinjury position pursuant to these provisions~~ *others being increased due to the effects of the injury or illness.* The bill would provide that it shall also be a violation of those provisions ~~for be presumed that an employer has discriminated against an employee in violation of these provisions if the employer requires the to require an~~ employee to perform additional physical duties that were not required of the employee prior to his or her injury *or illness* as a condition for returning to employment. ~~By creating a new crime, the bill would impose a state-mandated local program, unless the additional physical duties are reasonably required to accommodate the employee's disability.~~

(2) Existing law provides for the payment of temporary disability indemnity payments to any injured employee under specified circumstances, with certain exceptions, and provides that, if an injury causes permanent partial disability and the injured employee does not return to work for the employer within 60 days of the termination of temporary disability indemnity payments, the injured employee shall receive a supplemental job displacement benefit, as specified. Existing law further provides that an employer shall not be liable for supplemental job displacement benefits if, within 30 days of termination of temporary disability indemnity payments, the employer offers, and the employee rejects, or fails to accept, in the form and manner prescribed by the administrative director, modified work, accommodating the employee's work restrictions, lasting at least 12 months.

This bill would, instead, provide that, for injuries occurring on or after January 1, 2008, if the injury causes ~~permanent partial disability and the injured employee does not return to work within 60 days from the date an injury is determined to be compensable disability within 60 days after the disability becomes permanent and stationary,~~ the employee shall receive a supplemental job displacement benefit, and would revise the amounts of benefits an injured employee would be eligible to receive, as specified.

(3) Existing law provides that the employer shall not be liable for the supplemental job displacement benefit if, within 30 days of the termination of temporary disability indemnity benefits, the employer offers, and the employee rejects, or fails to accept, modified or alternative work, as specified.

This bill instead would provide that an employer shall not be liable for supplemental job displacement benefits if, within *60 days of the disability becoming permanent and stationary, the employer offers the injured employee regular work, modified work, or alternative work, and 10 days of the date the injury is determined to be permanent and stationary*, the employee rejects, or fails to accept, modified or alternative work. It would also make a technical, clarifying change.

~~(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that no reimbursement is required by this act for a specified reason.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~yes~~*no*. State-mandated local program: ~~yes~~*no*.

The people of the State of California do enact as follows:

1 SECTION 1. Section 132a of the Labor Code is amended to
2 read:

3 132a. (a) It is the declared policy of this state that there should
4 not be discrimination against workers who are injured in the course
5 and scope of their employment. It is further the policy of this state
6 that there should not be discrimination against employees who
7 attempt to exercise their rights under subdivision (d) of Section
8 4600.

9 (b) (1) Any employer who discharges, or threatens to discharge,
10 or in any manner discriminates against any employee because he
11 or she has filed or made known his or her intention to file a claim
12 for compensation with his or her employer or an application for
13 adjudication, or because the employee has received a rating, award,
14 or settlement, is guilty of a misdemeanor and the employee's
15 compensation shall be increased by one-half, but in no event more
16 than ten thousand dollars (\$10,000), together with costs and
17 expenses not in excess of two hundred fifty dollars (\$250). Any
18 such employee shall also be entitled to reinstatement and
19 reimbursement for lost wages and work benefits caused by the acts
20 of the employer.

21 (2) Any insurer that advises, directs, or threatens an insured
22 under penalty of cancellation or a raise in premium or for any other
23 reason, to discharge an employee because he or she has filed or

1 made known his or her intention to file a claim for compensation
2 with his or her employer or an application for adjudication, or
3 because the employee has received a rating, award, or settlement,
4 is guilty of a misdemeanor and subject to the increased
5 compensation and costs provided in paragraph (1).

6 (3) Any employer who discharges, or threatens to discharge, or
7 in any manner discriminates against any employee because the
8 employee testified or made known his or her intentions to testify
9 in another employee's case before the appeals board, is guilty of
10 a misdemeanor, and the employee shall be entitled to reinstatement
11 and reimbursement for lost wages and work benefits caused by
12 the acts of the employer.

13 ~~(4) (A) It shall be presumed that an employer has discriminated~~
14 ~~against an employee in violation of paragraph (1) if, after the~~

15 (4) (A) *If, after the employee has been disabled by an injury or*
16 *illness arising out of, or in the course of, employment, the employee*
17 *is willing and available to return to work, it shall be presumed*
18 *that an employer has discriminated against an employee in*
19 *violation of paragraph (1) if the employer refuses to reinstate the*
20 *employee to full wages and benefits within one working day five*
21 *working days after receipt of a written statement by the treating*
22 *physician that the employee is able to perform the full requirements*
23 *of the employee's regular position, notwithstanding the risks*
24 *inherent in the position, without a risk of further injury to the*
25 *employee or others. This presumption is disputable being increased*
26 *due to the effects of the injury or illness. This presumption is*
27 *rebuttable and may be controverted by other evidence, but unless*
28 *so controverted, the appeals board is bound to find in accordance*
29 *with it.*

30 (B) *It shall be presumed that an employer has discriminated*
31 *against an employee in violation of paragraph (1) if the employer*
32 *requires the employee to perform additional physical duties that*
33 *the employee was not required to perform prior to the injuries or*
34 *illness as a condition of returning to work, unless the additional*
35 *physical duties are reasonably required to accommodate the*
36 *employee's disability. This presumption is rebuttable and may be*
37 *controverted by other evidence, but unless so controverted, the*
38 *appeals board is bound to find in accordance with it.*

39 (B)

1 (C) Any employer who refuses to reinstate an employee to his
2 or her preinjury job in accordance with the requirements of this
3 section ~~is guilty of a misdemeanor, and shall pay a penalty of one~~
4 hundred dollars (\$100) per day for each day the employer is in
5 violation of this paragraph, plus the employee's full wages and
6 benefits. ~~It shall also be a violation of this section for an employer~~
7 ~~to require an employee to perform additional physical duties that~~
8 ~~the employee was not required to perform prior to the illness or~~
9 ~~injury as a condition of returning to work. Nothing in this paragraph~~
10 ~~shall preclude an employer from seeking an alternative opinion~~
11 ~~from an agreed medical evaluator pursuant to Section 4062 if the~~
12 ~~employer continues to reinstate the employee to his or her position~~
13 ~~with full wages and benefits. The report of the agreed medical~~
14 ~~evaluator shall be based on an in-person physical examination of~~
15 ~~the employee. If the report of the agreed medical evaluator states~~
16 ~~that the employee is unable to perform the full requirements of the~~
17 ~~employee's regular position, or is unable to perform the full~~
18 ~~requirements of the employee's regular position, notwithstanding~~
19 ~~the inherent risks of the position, without risk of further illness or~~
20 ~~injury to the employee or to others then the employer shall be~~
21 ~~released from any further obligation to reinstate the employee to~~
22 ~~full wages and benefits pursuant to this paragraph and shall not be~~
23 ~~liable for penalties for a violation of this section. Nothing in this~~
24 ~~paragraph shall preclude an employer from objecting to the~~
25 ~~opinion of the treating physician pursuant to Section 4062 or from~~
26 ~~obtaining an opinion from an agreed medical evaluator or qualified~~
27 ~~medical evaluator pursuant to that section if the employer pays~~
28 ~~the employee his or her full wages and benefits due for that period.~~
29 *The report of the agreed medical evaluator or qualified medical*
30 *evaluator shall be based on an in-person physical examination of*
31 *the employee. If the report of the agreed medical evaluator or the*
32 *qualified medical evaluator states that the employee is unable to*
33 *perform the full requirements of the employee's regular position,*
34 *or is unable to perform the full requirements of the employee's*
35 *regular position without the risk of further injury or illness to the*
36 *employee or the risk of injury to others being increased due to the*
37 *effects of the injury or illness, then the employer shall have no*
38 *further obligation to pay the employee full wages and benefits*
39 *pursuant to this paragraph for any period after the date of service*
40 *of the report, and the employer shall not be liable for penalties for*

1 a violation pursuant to this paragraph. Where the report of the
2 agreed medical evaluator or the qualified medical evaluator does
3 not concur with the report from the treating physician, the
4 employee shall not be liable for the repayment of any wages,
5 benefits, or penalty moneys received.

6 ~~(5) Any insurer that advises, directs, or threatens an insured~~
7 ~~employer under penalty of cancellation or a raise in premium or~~
8 ~~for any other reason, to discharge or in any manner discriminate~~
9 ~~against an employee because the employee testified or made known~~
10 ~~his or her intention to testify in another employee's case before~~
11 ~~the appeals board, is guilty of a misdemeanor.~~

12 (5) It shall be presumed that an employer has discriminated
13 against an employee in violation of paragraph (1) if the employer
14 denies an employee the right to predesignate a treating physician
15 in accordance with subdivision (d) of Section 4600 prior to injury
16 or illness or denies an employee the right to see his or her properly
17 predesignated physician or a medical provider to whom the
18 predesignated physician has referred the employee after the injury
19 or illness.

20 (6) Proceedings for increased compensation as provided in
21 paragraph (1), or for reinstatement and reimbursement for lost
22 wages and work benefits, are to be instituted by filing an
23 appropriate petition with the appeals board, but these proceedings
24 may not be commenced more than one year from the discriminatory
25 act or date of termination of the employee. The appeals board is
26 vested with full power, authority, and jurisdiction to try and
27 determine finally all matters specified in this section subject only
28 to judicial review, except that the appeals board shall have no
29 jurisdiction to try and determine a misdemeanor charge. The
30 appeals board may refer and any worker may complain of suspected
31 violations of the criminal misdemeanor provisions of this section
32 to the Division of Labor Standards Enforcement, or directly to the
33 office of the public prosecutor.

34 SEC. 2. Section 3201.81 of the Labor Code is amended to read:

35 3201.81. In the horse racing industry, the organization certified
36 by the California Horse Racing Board to represent the majority of
37 licensed jockeys pursuant to subdivision (b) of Section 19612.9
38 of the Business and Professions Code is the labor organization
39 authorized to negotiate the collective bargaining agreement

1 establishing an alternative dispute resolution system for licensed
2 jockeys pursuant to Section 3201.7.

3 SEC. 3. Section 4658.5 of the Labor Code is amended to read:

4 4658.5. (a) (1) Except as provided in Section 4658.6, if the
5 injury causes permanent partial disability and the injured employee
6 does not return to work for the employer within 60 days of the
7 termination of temporary disability, the injured employee shall be
8 eligible for a supplemental job displacement benefit in the form
9 of a nontransferable voucher for education-related retraining or
10 skill enhancement, or both, at state-approved or accredited schools,
11 as follows:

12 (A) Up to four thousand dollars (\$4,000) for permanent partial
13 disability awards of less than 15 percent.

14 (B) Up to six thousand dollars (\$6,000) for permanent partial
15 disability awards between 15 and 25 percent.

16 (C) Up to eight thousand dollars (\$8,000) for permanent partial
17 disability awards between 26 and 49 percent.

18 (D) Up to ten thousand dollars (\$10,000) for permanent partial
19 disability awards between 50 and 99 percent.

20 (2) Except as provided in Section 4658.6, for injuries occurring
21 on or after January 1, 2008, if the injury causes ~~permanent partial~~
22 ~~compensable~~ disability and the injured employee does not return
23 to work for the employer within 60 days from the date an injury
24 is determined to be permanent and stationary, the employee shall
25 be eligible for *within 60 days after the disability becomes*
26 *permanent and stationary, the employee shall be entitled to a*
27 *supplemental job displacement benefit in the form of a*
28 *nontransferable voucher for education-related retraining or skill*
29 *enhancement, or both, at state accredited schools, in the amount*
30 *of two thousand five hundred dollars (\$2,500) per semester for*
31 *each semester an injured employee is actually enrolled in a*
32 *state-approved or accredited school. The voucher shall not exceed*
33 *a total amount of ten thousand dollars (\$10,000): schools. The*
34 *maximum amount of the voucher available for the payment of*
35 *tuition, fees, books, and other expenses required by the school in*
36 *any one semester, in any one quarter, or in any other academic*
37 *term into which the school divides the academic year shall be*
38 *prorated for the academic term at a rate not to exceed five*
39 *thousand dollars (\$5,000) per year.*

(b) The voucher may be used for payment of tuition, fees, books, and other expenses required by the school for retraining or skill enhancement. No more than 10 percent of the voucher moneys may be used for vocational or return to work counseling. The administrative director shall adopt regulations governing the form of payment, direct reimbursement to the injured employee upon presentation to the employer of appropriate documentation and receipts, and any other matters necessary to the proper administration of the supplemental job displacement benefit.

(c) ~~Within 10 days from the date the injury is determined to be permanent and stationary, of the date of the last payment of temporary disability~~ the employer shall provide to the employee, in the form and manner prescribed by the administrative director, information that provides notice of rights under this section. This notice shall be sent by certified mail.

(d) Except as provided in paragraph (2) of subdivision (a), this section shall apply to injuries occurring on or after January 1, 2004.

SEC. 4. Section 4658.6 of the Labor Code is amended to read:

4658.6. The employer shall not be liable for the supplemental ~~job displacement benefit if the employer meets either of the following conditions: job displacement benefit within 60 days of the disability becoming permanent and stationary if the employer offers the injured employee regular work, modified work, or alternative work in the form and manner prescribed by the administrative director, lasting for a period of at least 12 months.~~

~~(a) Within 10 days of the date the injury is determined to be permanent and stationary, the employer offers, and the employee rejects, or fails to accept, in the form and manner prescribed by the administrative director, modified work, accommodating the employee's work restrictions, lasting at least 12 months.~~

~~(b) Within 10 days of the date the injury is determined to be permanent and stationary, the employer offers, and the employee rejects, or fails to accept, in the form and manner prescribed by the administrative director, alternative work meeting all of the following conditions:~~

~~(1) The employee has the ability to perform the essential functions of the job provided.~~

~~(2) The job provided is in a regular position lasting at least 12 months.~~

1 ~~(3) The job provided offers wages and compensation that are~~
2 ~~within 15 percent of those paid to the employee at the time of~~
3 ~~injury.~~

4 ~~(4) The job is located within reasonable commuting distance of~~
5 ~~the employee's residence at the time of injury.~~

6 ~~SEC. 5. No reimbursement is required by this act pursuant to~~
7 ~~Section 6 of Article XIII B of the California Constitution because~~
8 ~~the only costs that may be incurred by a local agency or school~~
9 ~~district will be incurred because this act creates a new crime or~~
10 ~~infraction, eliminates a crime or infraction, or changes the penalty~~
11 ~~for a crime or infraction, within the meaning of Section 17556 of~~
12 ~~the Government Code, or changes the definition of a crime within~~
13 ~~the meaning of Section 6 of Article XIII B of the California~~
14 ~~Constitution.~~